

Senate Bill No. 308

Passed the Senate August 24, 2009

Secretary of the Senate

Passed the Assembly August 17, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 6501 of the Business and Professions Code, to amend Sections 366.2 and 366.3 of the Code of Civil Procedure, and to amend Sections 1303 and 1304 of, and to add Section 13 to, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

SB 308, Harman. Professional fiduciaries: donative transfers.

(1) Existing law, the Professional Fiduciaries Act, defines professional fiduciaries required to be licensed by the Professional Fiduciaries Bureau within the Department of Consumer Affairs as a person who acts as a conservator or guardian for 2 or more persons who are related to the professional fiduciary or each other, or a person who acts as a trustee or agent under a durable power of attorney for more than 3 people or families who are not related to the professional fiduciary.

This bill would specify how individuals are counted to determine whether a person is a professional fiduciary, including that individuals related to the fiduciary would not be counted and individuals or trustors who are related to each other would be counted as one individual.

(2) Existing law, effective January 1, 2010, in relation to wills, trusts, and other instruments, defines and regulates no contest clauses. Existing law limits the application of a no contest clause to specific contests and provides that a no contest clause may be enforced against a direct contest only when it is brought without probable cause. Former law exempted certain contests from the enforcement of the no contest clause under specified circumstances, including if there was reasonable cause to believe that instrument had been revoked. Former law also permitted a beneficiary to apply to a court for a determination of whether a particular motion, petition, or other act by the beneficiary would be a contest within the terms of a no contest clause.

This bill would make conforming changes to clarify under what circumstances the former law would apply.

(3) Existing law provides for a decedent's property to be distributed through intestate succession when the decedent dies

without a will, trust, or other instrument based on the degree of kinship. Existing law prohibits certain property transactions between certain court officials or employees or their relatives and guardians or conservators based on the lineal or collateral consanguinity of the person to the court official or employee. Existing law requires a guardian or conservator, when engaging in certain property transactions, or when seeking approval for certain acts, with the guardians or conservator's family members, based on lineal or collateral consanguinity, to disclose that relationship to the court upon a petition for approval.

This bill would define the degree of kinship or consanguinity for the purpose of these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6501 of the Business and Professions Code is amended to read:

6501. As used in this chapter, the following terms have the following meanings:

- (a) "Act" means this chapter.
- (b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.
- (c) "Client" means an individual who is served by a professional fiduciary.
- (d) "Department" means the Department of Consumer Affairs.
- (e) "Licensee" means a person who is licensed under this chapter as a professional fiduciary.
- (f) (1) "Professional fiduciary" means a person who acts as a conservator of the person, the estate, or person and estate, or guardian of the estate, or person and estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other.
- (2) "Professional fiduciary" also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three individuals, at the same time.

In counting individuals under this paragraph to determine whether a person is a professional fiduciary:

(A) Individuals who are related to the fiduciary shall not be counted.

(B) All individuals who are related to each other shall be counted as one individual.

(C) All trustors who are related to each other shall be counted as one individual, and neither the number of trusts nor the number of beneficiaries of those trusts shall be counted.

(3) For purposes of this subdivision, “related” means related by blood, adoption, marriage, or registered domestic partnership.

(4) “Professional fiduciary” does not include any of the following:

(A) A trust company, as defined in Section 83 of the Probate Code.

(B) An FDIC-insured institution, or its holding companies, subsidiaries, or affiliates. For the purposes of this subparagraph, “affiliate” means any entity that shares an ownership interest with, or that is under the common control of, the FDIC-insured institution.

(C) Any public agency, including the public guardian, public conservator, or other agency of the State of California or of a county of California or any regional center for persons with developmental disabilities as defined in Section 4620 of the Welfare and Institutions Code.

(D) A person employed by an entity or agency described in subparagraph (A), (B), or (C) who is acting within the course and scope of that employment, and a public officer of an agency described in subparagraph (C) acting in the course and scope of official duties.

(E) Any person whose sole activity as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative registered and regulated under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(g) “Committee” means the Professional Fiduciaries Advisory Committee, as established pursuant to Section 6511.

SEC. 2. Section 366.2 of the Code of Civil Procedure is amended to read:

366.2. (a) If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(b) The limitations period provided in this section for commencement of an action shall not be tolled or extended for any reason except as provided in any of the following, where applicable:

(1) Sections 12, 12a, and 12b of this code.

(2) Part 4 (commencing with Section 9000) of Division 7 of the Probate Code (creditor claims in administration of estates of decedents).

(3) Part 8 (commencing with Section 19000) of Division 9 of the Probate Code (payment of claims, debts, and expenses from revocable trust of deceased settlor).

(4) Former Part 3 (commencing with Section 21300) of Division 11 of the Probate Code (no contest clauses), as that part read prior to its repeal by Chapter 174 of the Statutes of 2008.

(c) This section applies to actions brought on liabilities of persons dying on or after January 1, 1993.

SEC. 3. Section 366.3 of the Code of Civil Procedure is amended to read:

366.3. (a) If a person has a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust or under another instrument, whether the promise or agreement was made orally or in writing, an action to enforce the claim to distribution may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(b) The limitations period provided in this section for commencement of an action shall not be tolled or extended for any reason except as provided in Sections 12, 12a, and 12b of this code, and former Part 3 (commencing with Section 21300) of Division 11 of the Probate Code, as that part read prior to its repeal by Chapter 174 of the Statutes of 2008.

(c) This section applies to actions brought on claims concerning persons dying on or after the effective date of this section.

SEC. 4. Section 13 is added to the Probate Code, to read:

13. (a) The degree of kinship or consanguinity between two persons is determined by counting the number of generations separating those persons, pursuant to subdivision (b) or (c). Each generation is called a degree.

(b) Lineal kinship or consanguinity is the relationship between two persons, one of whom is a direct descendant of the other. The degree of kinship between those persons is determined by counting the generations separating the first person from the second person. In counting the generations, the first person is excluded and the second person is included. For example, parent and child are related in the first degree of lineal kinship or consanguinity, grandchild and grandparent are related in the second degree, and great-grandchild and great-grandparent are related in the third degree.

(c) Collateral kinship or consanguinity is the relationship between two people who spring from a common ancestor, but neither person is the direct descendent of the other. The degree of kinship is determined by counting the generations from the first person up to the common ancestor and from the common ancestor down to the second person. In counting the generations, the first person is excluded, the second person is included, and the common ancestor is counted only once. For example, siblings are related in the second degree of collateral kinship or consanguinity, an aunt or uncle and a niece or nephew are related in the third degree, and first cousins are related in the fourth degree.

SEC. 5. Section 1303 of the Probate Code is amended to read:

1303. With respect to a decedent's estate, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking letters to a personal representative, except letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.

(g) Directing distribution of property.

(h) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(i) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.

(j) Determining whether an action constitutes a contest under former Chapter 2 (commencing with Section 21320) of Part 3 of Division 11, as that chapter read prior to its repeal by Chapter 174 of the Statutes of 2008.

(k) Determining the priority of debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

(l) Any final order under Chapter 1 (commencing with Section 20100) or Chapter 2 (commencing with Section 20200) of Division 10.

SEC. 6. Section 1304 of the Probate Code is amended to read:

1304. With respect to a trust, the grant or denial of the following orders is appealable:

(a) Any final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, except the following:

(1) Compelling the trustee to submit an account or report acts as trustee.

(2) Accepting the resignation of the trustee.

(b) Any final order under Chapter 2 (commencing with Section 19020) of Part 8 of Division 9.

(c) Any final order under Part 1 (commencing with Section 20100) and Part 2 (commencing with Section 20200) of Division 10.

(d) Determining whether an action constitutes a contest under former Chapter 2 (commencing with Section 21320) of Part 3 of Division 11, as that chapter read prior to its repeal by Chapter 174 of the Statutes of 2008.

Approved _____, 2009

Governor